

STATE OF NEW YORK

7709

IN SENATE

February 10, 2020

Introduced by Sen. KAPLAN -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to enacting the "Give Kids a Chance - Carter's Law" mandating health insurance coverage for congenital anomalies

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "Give Kids a Chance - Carter's Law".

3 § 2. Subsection (a) of section 3216 of the insurance law is amended by
4 adding 5 new paragraphs 5, 6, 7, 8 and 9 to read as follows:

5 (5) "Congenital anomaly" means a medically diagnosed condition exist-
6 ing at or from birth that is a deviation from the common structure or
7 function of the body, whether caused by a hereditary or developmental
8 disability or disease.

9 (6) "Cosmetic surgery" means surgical and nonsurgical elective proce-
10 dures that enhance and reshape structures of the body to improve appear-
11 ance and confidence, but are not necessary to improve body structure or
12 function.

13 (7) "Habilitative services" means healthcare services that help an
14 individual keep, learn, or improve skills and functioning for daily
15 living. Habilitative services shall include but is not limited to phys-
16 ical and occupational therapy, speech-language pathology, and services
17 for people with disabilities in a variety of inpatient and/or outpatient
18 settings.

19 (8) "Reconstructive services" means procedures or surgery that are
20 performed to treat structures of the body affected aesthetically or
21 functionally by congenital anomalies, developmental abnormalities, trau-
22 ma, infection, tumors, or disease. Reconstructive services are intended
23 to improve function and ability, and may also be performed to achieve a
24 more typical appearance of the affected structure.

25 (9) "Deviation" means an anomaly that impairs the function of the body
26 and includes but is not limited to the conditions of cleft lip, cleft
27 palate, webbed fingers or toes, supernumerary toes or fingers, craniofa-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD14264-03-9

cial malformations, disorders of metabolism, and other conditions that are medically diagnosed to be congenital anomalies.

§ 3. Paragraph 4 of subsection (c) of section 3216 of the insurance law is amended by adding a new subparagraph (D) to read as follows:

(D) (1) For the purpose of this subparagraph, the term "treatment" includes inpatient and outpatient care and services performed to improve or restore body function, or performed to approximate a normal appearance, as a result of a congenital anomaly and shall not include cosmetic surgery. Inpatient and outpatient care and services shall include treatment to any and all missing or abnormal body parts, including teeth, the oral cavity, and their associated structures, that would otherwise be provided under the plan or coverage for any other injury and sickness, including:

(i) All inpatient and outpatient reconstructive services and procedures;

(ii) All services, procedures, and adjunctive needs, including but not limited to prosthetics and appliances, resulting from complications;

(iii) Adjunctive dental, orthodontic or prosthodontic support from birth until the medical or surgical treatment of the anomaly has been completed, including ongoing or subsequent treatment required to maintain function or approximate a normal appearance;

(iv) Procedures that do not materially restore or improve the function of the body part being treated; and

(v) Procedures for secondary conditions and follow-up treatments.

(2) (i) Every policy, plan, certificate or contract shall provide benefits for reconstructive services when such treatment is incidental to or follows surgery resulting from injury, sickness or other diseases of the involved missing or abnormal body part or when such treatment is provided to a covered dependent child because of congenital disease or anomaly as determined by the treating physician.

(ii) Every policy, plan, certificate or contract shall provide benefits for habilitative services when such treatment is incidental to or follows surgery resulting from injury, sickness or other diseases of the involved missing or abnormal body part or when such treatment is provided to a covered dependent child because of congenital disease or anomaly as determined by the treating physician.

(iii) Every policy, plan, certificate or contract may be subject to annual deductible, co-payment, and coinsurance provisions as may be deemed appropriate and as are consistent with those established for other benefits under the plan or coverage.

(iv) No policy, plan, certificate or contract shall:

a. Deny to a patient eligibility or continued eligibility, to enroll or to renew, coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this subparagraph; or

b. Penalize or otherwise reduce or limit the reimbursement of a treating provider, or provide monetary or other incentives to a treating provider to induce the provider to provide care to an individual participant or beneficiary in a manner inconsistent with this subparagraph.

(v) Written notice of the availability of the coverage shall be delivered to the participant upon enrollment and annually thereafter.

(3) (i) In accordance with section forty-four hundred eight of the public health law, an enrollee has the right to appeal any denial of care that the carrier determines is not medically necessary or experimental.

(ii) An internal appeal of denial filed by an enrollee or the enrollee's provider to the insurance carrier regarding coverage for

reconstructive or habilitative services to treat a congenital anomaly shall be expedited by the carrier. The health plan shall respond orally with a decision within forty-eight hours, followed by a confirmation in writing within seven days.

§ 4. Subsection (f) of section 4235 of the insurance law is amended by adding a new paragraph 5 to read as follows:

(5) (A) As used in this paragraph:

(i) "Congenital anomaly" means a medically diagnosed condition existing at or from birth that is a deviation from the common structure or function of the body, whether caused by a hereditary or developmental disability or disease.

(ii) "Cosmetic surgery" means surgical and nonsurgical elective procedures that enhance and reshape structures of the body to improve appearance and confidence, but are not necessary to improve body structure or function.

(iii) "Habilitative services" means healthcare services that help an individual keep, learn, or improve skills and functioning for daily living. Habilitative services shall include but is not limited to physical and occupational therapy, speech-language pathology, and services for people with disabilities in a variety of inpatient and/or outpatient settings.

(iv) "Reconstructive services" means procedures or surgery that are performed to treat structures of the body affected aesthetically or functionally by congenital anomalies, developmental abnormalities, trauma, infection, tumors, or disease. Reconstructive services are intended to improve function and ability, and may also be performed to achieve a more typical appearance of the affected structure.

(v) "Deviation" means an anomaly that impairs the function of the body and includes but is not limited to the conditions of cleft lip, cleft palate, webbed fingers or toes, supernumerary toes or fingers, craniofacial malformations, disorders of metabolism, and other conditions that are medically diagnosed to be congenital anomalies.

(B) (i) For the purpose of this paragraph, the term "treatment" includes inpatient and outpatient care and services performed to improve or restore body function, or performed to approximate a normal appearance, as a result of a congenital anomaly and shall not include cosmetic surgery. Inpatient and outpatient care and services shall include treatment to any and all missing or abnormal body parts, including teeth, the oral cavity, and their associated structures, that would otherwise be provided under the plan or coverage for any other injury and sickness, including:

(I) All inpatient and outpatient reconstructive services and procedures;

(II) All services, procedures, and adjunctive needs, including but not limited to prosthetics and appliances, resulting from complications;

(III) Adjunctive dental, orthodontic or prosthodontic support from birth until the medical or surgical treatment of the anomaly has been completed, including ongoing or subsequent treatment required to maintain function or approximate a normal appearance;

(IV) Procedures that do not materially restore or improve the function of the body part being treated; and

(V) Procedures for secondary conditions and follow-up treatments.

(ii) (I) Every policy, plan, certificate or contract shall provide benefits for reconstructive services when such treatment is incidental to or follows surgery resulting from injury, sickness or other diseases of the involved missing or abnormal body part or when such treatment is

1 provided to a covered dependent child because of congenital disease or
2 anomaly as determined by the treating physician.

3 (II) Every policy, plan, certificate or contract shall provide bene-
4 fits for habilitative services when such treatment is incidental to or
5 follows surgery resulting from injury, sickness or other diseases of the
6 involved missing or abnormal body part or when such treatment is
7 provided to a covered dependent child because of congenital disease or
8 anomaly as determined by the treating physician.

9 (III) Every policy, plan, certificate or contract may be subject to
10 annual deductible, co-payment, and coinsurance provisions as may be
11 deemed appropriate and as are consistent with those established for
12 other benefits under the plan or coverage.

13 (IV) No policy, plan, certificate or contract shall:

14 a. Deny to a patient eligibility or continued eligibility, to enroll
15 or to renew, coverage under the terms of the plan, solely for the
16 purpose of avoiding the requirements of this paragraph; or

17 b. Penalize or otherwise reduce or limit the reimbursement of a treat-
18 ing provider, or provide monetary or other incentives to a treating
19 provider to induce the provider to provide care to an individual partic-
20 ipant or beneficiary in a manner inconsistent with this paragraph.

21 (V) Written notice of the availability of the coverage shall be deliv-
22 ered to the participant upon enrollment and annually thereafter.

23 (iii) (I) In accordance with section forty-four hundred eight of the
24 public health law, an enrollee has the right to appeal any denial of
25 care that the carrier determines is not medically necessary or exper-
26 imental.

27 (II) An internal appeal of denial filed by an enrollee or the
28 enrollee's provider to the insurance carrier regarding coverage for
29 reconstructive or habilitative services to treat a congenital anomaly
30 shall be expedited by the carrier. The health plan shall respond orally
31 with a decision within forty-eight hours, followed by a confirmation in
32 writing within seven days.

33 § 5. Paragraph 1 of subsection (d) of section 4304 of the insurance
34 law is amended by adding a new subparagraph (D) to read as follows:

35 (D) (i) As used in this paragraph:

36 1. "Congenital anomaly" means a medically diagnosed condition existing
37 at or from birth that is a deviation from the common structure or func-
38 tion of the body, whether caused by a hereditary or developmental disa-
39 bility or disease.

40 2. "Cosmetic surgery" means surgical and nonsurgical elective proce-
41 dures that enhance and reshape structures of the body to improve appear-
42 ance and confidence, but are not necessary to improve body structure or
43 function.

44 3. "Habilitative services" means healthcare services that help an
45 individual keep, learn, or improve skills and functioning for daily
46 living. Habilitative services shall include but is not limited to phys-
47 ical and occupational therapy, speech-language pathology, and services
48 for people with disabilities in a variety of inpatient and/or outpatient
49 settings.

50 4. "Reconstructive services" means procedures or surgery that are
51 performed to treat structures of the body affected aesthetically or
52 functionally by congenital anomalies, developmental abnormalities, trau-
53 ma, infection, tumors, or disease. Reconstructive services are intended
54 to improve function and ability, and may also be performed to achieve a
55 more typical appearance of the affected structure.

1 5. "Deviation" means an anomaly that impairs the function of the body
2 and includes but is not limited to the conditions of cleft lip, cleft
3 palate, webbed fingers or toes, supernumerary toes or fingers, craniofa-
4 cial malformations, disorders of metabolism, and other conditions that
5 are medically diagnosed to be congenital anomalies.

6 (ii) For the purpose of this subparagraph, the term "treatment"
7 includes inpatient and outpatient care and services performed to improve
8 or restore body function, or performed to approximate a normal appear-
9 ance, as a result of a congenital anomaly and shall not include cosmetic
10 surgery. Inpatient and outpatient care and services shall include treat-
11 ment to any and all missing or abnormal body parts, including teeth, the
12 oral cavity, and their associated structures, that would otherwise be
13 provided under the plan or coverage for any other injury and sickness,
14 including:

15 1. All inpatient and outpatient reconstructive services and proce-
16 dures;

17 2. All services, procedures, and adjunctive needs, including prosthet-
18 ics and appliances, resulting from complications;

19 3. Adjunctive dental, orthodontic or prosthodontic support from birth
20 until the medical or surgical treatment of the anomaly has been
21 completed, including ongoing or subsequent treatment required to main-
22 tain function or approximate a normal appearance;

23 4. Procedures that do not materially restore or improve the function
24 of the body part being treated; and

25 5. Procedures for secondary conditions and follow-up treatments.

26 (iii) 1. Every policy, plan, certificate or contract shall provide
27 benefits for reconstructive services when such treatment is incidental
28 to or follows surgery resulting from injury, sickness or other diseases
29 of the involved missing or abnormal body part or when such treatment is
30 provided to a covered dependent child because of congenital disease or
31 anomaly as determined by the treating physician.

32 2. Every policy, plan, certificate or contract shall provide benefits
33 for habilitative services when such treatment is incidental to or
34 follows surgery resulting from injury, sickness or other diseases of the
35 involved missing or abnormal body part or when such treatment is
36 provided to a covered dependent child because of congenital disease or
37 anomaly as determined by the treating physician.

38 3. Every policy, plan, certificate or contract may be subject to annu-
39 al deductible, co-payment, and coinsurance provisions as may be deemed
40 appropriate and as are consistent with those established for other bene-
41 fits under the plan or coverage.

42 4. No policy, plan, certificate or contract shall:

43 a. Deny to a patient eligibility or continued eligibility, to enroll
44 or to renew, coverage under the terms of the plan, solely for the
45 purpose of avoiding the requirements of this subparagraph; or

46 b. Penalize or otherwise reduce or limit the reimbursement of a treat-
47 ing provider, or provide monetary or other incentives to a treating
48 provider to induce the provider to provide care to an individual partic-
49 ipant or beneficiary in a manner inconsistent with this subparagraph.

50 (iv) Written notice of the availability of the coverage shall be
51 delivered to the participant upon enrollment and annually thereafter.

52 (v) 1. In accordance with section forty-four hundred eight of the
53 public health law, an enrollee has the right to appeal any denial of
54 care that the carrier determines is not medically necessary or exper-
55 imental.

2. An internal appeal of denial filed by an enrollee or the enrollee's provider to the insurance carrier regarding coverage for reconstructive or habilitative services to treat a congenital anomaly shall be expedited by the carrier. The health plan shall respond orally with a decision within forty-eight hours, followed by a confirmation in writing within seven days.

§ 6. Paragraph 1 of subsection (c) of section 4305 of the insurance law is amended by adding a new subparagraph (D) to read as follows:

(D)(i) As used in this subparagraph:

1. "Congenital anomaly" means a medically diagnosed condition existing at or from birth that is a deviation from the common structure or function of the body, whether caused by a hereditary or developmental disability or disease.

2. "Cosmetic surgery" means surgical and nonsurgical elective procedures that enhance and reshape structures of the body to improve appearance and confidence, but are not necessary to improve body structure or function.

3. "Habilitative services" means healthcare services that help an individual keep, learn, or improve skills and functioning for daily living. Habilitative services shall include but is not limited to physical and occupational therapy, speech-language pathology, and services for people with disabilities in a variety of inpatient and/or outpatient settings.

4. "Reconstructive services" means procedures or surgery that are performed to treat structures of the body affected aesthetically or functionally by congenital anomalies, developmental abnormalities, trauma, infection, tumors, or disease. Reconstructive services are intended to improve function and ability, and may also be performed to achieve a more typical appearance of the affected structure.

5. "Deviation" means an anomaly that impairs the function of the body and includes but is not limited to the conditions of cleft lip, cleft palate, webbed fingers or toes, supernumerary toes or fingers, craniofacial malformations, disorders of metabolism, and other conditions that are medically diagnosed to be congenital anomalies.

(ii) For the purpose of this subparagraph, the term "treatment" includes inpatient and outpatient care and services performed to improve or restore body function, or performed to approximate a normal appearance, as a result of a congenital anomaly and shall not include cosmetic surgery. Inpatient and outpatient care and services shall include treatment to any and all missing or abnormal body parts, including teeth, the oral cavity, and their associated structures, that would otherwise be provided under the plan or coverage for any other injury and sickness, including:

1. All inpatient and outpatient reconstructive services and procedures;

2. All services, procedures, and adjunctive needs, including prosthetics and appliances, resulting from complications;

3. Adjunctive dental, orthodontic or prosthodontic support from birth until the medical or surgical treatment of the anomaly has been completed, including ongoing or subsequent treatment required to maintain function or approximate a normal appearance;

4. Procedures that do not materially restore or improve the function of the body part being treated; and

5. Procedures for secondary conditions and follow-up treatments.

(iii) 1. Every policy, plan, certificate or contract shall provide benefits for reconstructive services when such treatment is incidental

1 to or follows surgery resulting from injury, sickness or other diseases
2 of the involved missing or abnormal body part or when such treatment is
3 provided to a covered dependent child because of congenital disease or
4 anomaly as determined by the treating physician.

5 2. Every policy, plan, certificate or contract shall provide benefits
6 for habilitative services when such treatment is incidental to or
7 follows surgery resulting from injury, sickness or other diseases of the
8 involved missing or abnormal body part or when such treatment is
9 provided to a covered dependent child because of congenital disease or
10 anomaly as determined by the treating physician.

11 3. Every policy, plan, certificate or contract may be subject to annu-
12 al deductible, co-payment, and coinsurance provisions as may be deemed
13 appropriate and as are consistent with those established for other bene-
14 fits under the plan or coverage.

15 4. No policy, plan, certificate or contract shall:

16 a. Deny to a patient eligibility or continued eligibility, to enroll
17 or to renew, coverage under the terms of the plan, solely for the
18 purpose of avoiding the requirements of this subparagraph; or

19 b. Penalize or otherwise reduce or limit the reimbursement of a treat-
20 ing provider or provide monetary or other incentives to a treating
21 provider to induce the provider to provide care to an individual partic-
22 ipant or beneficiary in a manner inconsistent with this subparagraph.

23 (iv) Written notice of the availability of the coverage shall be
24 delivered to the participant upon enrollment and annually thereafter.

25 (v) 1. In accordance with section forty-four hundred eight of the
26 public health law, an enrollee has the right to appeal any denial of
27 care that the carrier determines is not medically necessary or exper-
28 imental.

29 2. An internal appeal of denial filed by an enrollee or the enrollee's
30 provider to the insurance carrier regarding coverage for reconstructive
31 or habilitative services to treat a congenital anomaly shall be expe-
32 ditioned by the carrier. The health plan shall respond orally with a deci-
33 sion within forty-eight hours, followed by a confirmation in writing
34 within seven days.

35 § 7. This act shall take effect on the first of January next succeed-
36 ing the date on which it shall have become a law and shall apply to all
37 policies and contracts issued, renewed, modified, altered or amended on
38 or after such date.